

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 HEATH VINCENT FULKERSON,

4 Plaintiff,

5 v.

6 STATE OF NEVADA DEPARTMENT
7 OF BUSINESS AND INDUSTRY,

8 Defendant.

3:20-cv-00410-MMD-CLB

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE¹

9 Before the court is Plaintiff Heath Fulkerson's ("Fulkerson"), application to proceed *in*
10 *forma pauperis* (ECF No. 1), his motion to submit complaint (ECF No. 1-2), and his complaint
11 (ECF No. 1-1). For the reasons stated below, the court recommends that Fulkerson's *in*
12 *forma pauperis* application (ECF No. 1) be granted, his motion to submit complaint (ECF
13 No. 1-2) be granted, and his complaint (ECF No. 1-1) be dismissed, with prejudice.

14 **I. *IN FORMA PAUPERIS* APPLICATION**

15 A person may be granted permission to proceed *in forma pauperis* ("IFP") if the
16 person "submits an affidavit that includes a statement of all assets such [person] possesses
17 [and] that the person is unable to pay such fees or give security therefore. Such affidavit
18 shall state the nature of the action, defense or appeal and affiant's belief that the person is
19 entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir.
20 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner
21 actions).

22 The Local Rules of Practice for the District of Nevada provide: "Any person who is
23 unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].
24

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26 ¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United
27 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant
to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 The application must be made on the form provided by the court and must include a financial
2 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

3 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with some
4 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir.
5 1981) (quotation marks and citation omitted). A litigant need not "be absolutely destitute to
6 enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331,
7 339 (1948).

8 A review of the application to proceed IFP reveals Fulkerson cannot pay the filing fee;
9 therefore, the court recommends that the application (ECF No. 1) be granted.

10 **II. SCREENING STANDARD**

11 Prior to ordering service on any defendant, the Court is required to screen an *in forma*
12 *pauperis* complaint to determine whether dismissal is appropriate under certain
13 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28
14 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint for
15 the enumerated reasons). Such screening is required before a litigation proceeding *in forma*
16 *pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507 (9th Cir.
17 2015).

18 "[T]he court shall dismiss the case at any time if the court determines that – (A) the
19 allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or malicious; (ii)
20 fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against
21 a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

22 Dismissal of a complaint for failure to state a claim upon which relief may be granted
23 is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii)
24 tracks that language. When reviewing the adequacy of a complaint under this statute, the
25 court applies the same standard as is applied under Rule 12(b)(6). See, e.g., *Watison v.*
26 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a
27 plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii)

1 is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a
 2 claim.”). Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
 3 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

4 The Court must accept as true the allegations, construe the pleadings in the light
 5 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*
 6 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints
 7 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v.*
 8 *Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

9 A complaint must contain more than a “formulaic recitation of the elements of a cause
 10 of actions,” it must contain factual allegations sufficient to “raise a right to relief above the
 11 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading
 12 must contain something more. . . than. . . a statement of facts that merely creates a suspicion
 13 [of] a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a
 14 minimum, a plaintiff should include “enough facts to state a claim to relief that is plausible
 15 on its face.” *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

16 A dismissal should not be without leave to amend unless it is clear from the face of
 17 the complaint the action is frivolous and could not be amended to state a federal claim, or
 18 the district court lacks subject matter jurisdiction over the action. See *Cato v. United States*,
 19 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

20 **III. SCREENING OF COMPLAINT**

21 In his complaint, Fulkerson sues Defendants State of Nevada Department of
 22 Business and Industry (the “Department”) and the Hartford Financial Insurance Group (the
 23 “Hartford”) for violations of “federal and state injured workers rights,” violations of the
 24 “Federal Employment Compensation Act,” and a violation of Fulkerson’s “rights to receive
 25 medical treatment after being injured.” (See ECF No. 1-1 at 1.) Fulkerson alleges he was
 26 injured on numerous occasions while at work and submitted workers compensation claims
 27 to the Hartford but his claims were denied. (*Id.* at 1-3.) Fulkerson claims he is “being singled

1 out” by the Department due to previous lawsuits he has filed. (*Id.*) Fulkerson asks the court
2 to (1) investigate the claim handling of the Department, “impose an injunction,” and impose
3 internal review of their practices and (2) mediate and “inspect the proper documents and
4 medical notes” relating to his claims with Hartford. (*Id.* at 3.) For the reasons discussed
5 below, the court finds that Fulkerson’s complaint should be dismissed as frivolous because
6 its claims are duplicative of claims in another of Fulkerson’s pending actions.

7 Courts are not required to entertain duplicative or redundant lawsuits and may
8 dismiss them as frivolous or malicious under § 1915(e). See *Cato*, 70 F.3d at 1105 n.2
9 (noting that courts may dismiss under § 1915 a complaint that merely repeats pending or
10 previously litigated claims); see also *Aziz v. Burrows*, 976 F.2d 1158, 1158 (8th Cir. 1992)
11 (“district courts may dismiss a duplicative complaint raising issues directly related to issues
12 in another pending action brought by the same party”); *Adams v. Cal. Dep’t of Health Servs.*,
13 487 F.3d 684, 688 (9th Cir. 2007) (“Plaintiffs generally have ‘no right to maintain two
14 separate actions involving the same subject matter at the same time in the same court and
15 against the same defendant.’”), *overruled in part on other grounds by Taylor v. Sturgell*, 553
16 U.S. 880 (2008).

17 The claims raised in Fulkerson’s complaint against the Department and the Hartford
18 are directly related—and are in fact identical—to those raised in another action filed by
19 Fulkerson in Case No. 3:20-cv-00400-MMD-CLB. The complaints in both cases are
20 identical and thus entirely duplicative. (*Compare* ECF No. 1-1 in Case No. 3:20-cv-00410-
21 MMD-CLB, *with* ECF No. 1-1 in Case No. 3:20-cv-00400-MMD-CLB.) Accordingly, such
22 claims are improperly raised in the complaint in the instant case, as they are frivolous and
23 should be dismissed with prejudice.

24 **IV. CONCLUSION**

25 Consistent with the above, the court finds that dismissal is warranted under 28 U.S.C.
26 § 1915(e)(2)(B)(i). Because amendment would be futile, the dismissal should be with
27 prejudice. See *Cato*, 70 F.3d at 1106.

1 The parties are advised:

2 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
3 Practice, the parties may file specific written objections to this Report and Recommendation
4 within fourteen days of receipt. These objections should be entitled "Objections to
5 Magistrate Judge's Report and Recommendation" and should be accompanied by points
6 and authorities for consideration by the District Court.

7 2. This Report and Recommendation is not an appealable order and any notice
8 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
9 Court's judgment.

10 **V. RECOMMENDATION**

11 **IT IS THEREFORE RECOMMENDED** that Fulkerson's application to proceed *in*
12 *forma pauperis* (ECF No. 1) be **GRANTED**;

13 **IT IS FURTHER RECOMMENDED** that Fulkerson's motion to submit complaint (ECF
14 No. 1-2) be **GRANTED**;

15 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** the complaint (ECF No. 1-1);
16 and,

17 **IT IS FURTHER RECOMMENDED** that Fulkerson's complaint (ECF No. 1-1) be
18 **DISMISSED, WITH PREJUDICE.**

19 **DATED:** October 13, 2020.

20 
21 **UNITED STATES MAGISTRATE JUDGE**